



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Marann Inventories, Inc.--
Reconsideration
File: B-237651.4
Date: July 20, 1990

Chuck Giamalvo, Marann Inventories, Inc., for the protester.
John R. McCaw, Esq., Federal Aviation Administration,
Department of Transportation, for the agency.
James Vickers, Esq., and John Brosnan, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Dismissal of protest as academic following cancellation of invitation and agency's decision to perform in-house is affirmed since contrary to the protester's argument there is no requirement that a decision to perform a function in-house be supported by a cost study under OMB Circular A-76 and agency-wide guidelines for performance of support services supports agency's position that the decision to perform the services in-house was not made to avoid the consideration of the protest.

DECISION

Marann Inventories, Inc. requests reconsideration of our April 13, 1990, dismissal of its protest under invitation for bids (IFB) No. DTFA04-89-B-20004, issued by the Federal Aviation Administration for operation of the Logistics Support Complex at Anchorage, Alaska.

We affirm our dismissal.

On March 12, 1990, Marann protested the proposed award of a contract to C&C Enterprises, the low bidder under the IFB, because, according to Marann, C&C was improperly provided with inside information concerning the procurement by an FAA employee.

By letter dated April 4, the FAA advised our Office that it intended to perform the function itself "in-house" and that no award would be made under the IFB. The FAA also stated

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that it had referred the matter of the alleged information disclosure by the FAA employee to the agency's Inspector General. Based on the information, we dismissed the protest as academic.

Marann argues that our Office should not have dismissed its protest because the decision to perform the services in-house and the resulting cancellation were not supported by a cost study under the Office of Management and Budget Circular No. A-76. The protester also argues and the cancellation was merely a pretext to avoid our review of the protest allegations. We think the cancellation was justified and our dismissal of the protest proper.

An IFB may be canceled after bid opening when there is a compelling reason to do so. Federal Acquisition Regulation (FAR) § 14.404-1(a). Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist and our Office's review is normally limited to determining whether the exercise of discretion is reasonable. American Technical Communications, B-230827, July 15, 1988, 88-2 CPD ¶ 56. As a general rule, we do not review agency decisions to cancel procurements because the work is to be performed in-house, since these decisions are matters of executive branch policy. RAI, Inc., B-231889, July 13, 1988, 88-2 CPD ¶ 48. Where, as here, the protester argues that the agency's rationale is a pretext--that the agency's actual motivation was to avoid awarding it a contract or was in response to the filing of a protest, we will examine the reasonableness of the agency's justification. Griffin Servs., Inc., B-237268.2 et al., June 14, 1990, 90-1 CPD ¶ ____.

Marann first argues that the FAA's decision to perform the work in-house was improper because no cost study under A-76 was performed. An agency's decision to perform services in-house, however, need not be based upon the results of an A-76 cost comparison. H. David Feltoon, B-232418, Jan. 5, 1989, 89-1 CPD ¶ 10. Thus, the lack of a study does not provide a basis upon which to object to the FAA's action.

The cancellation itself, according to the agency, was based on guidelines issued by the FAA Administrator to all FAA contracting offices regarding support services contracts. The guideline established a total freeze on support services contracts until the administrator approved individual plans from each activity justifying the contractual effort. In accordance with these guidelines, the agency has advised our Office that it will perform the requirement in-house on a temporary basis and will later issue a cost comparison solicitation to determine whether to retain the requirement

in-house or have it performed by contract. These guidelines applied to all FAA offices and there is nothing which indicates that they were directed specifically at the procurement protested by Marann. Therefore, in view of the agency-wide concern, we do not find support for the protester's argument that the cancellation was improperly motivated to avoid award to Marann or to avoid its protest.

The dismissal is affirmed.

Robert T. Hinchman

for
James F. Hinchman
General Counsel